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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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NORTHERN DISTRICT OF CALIFOR

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C 07 5067

16 UNITED STATES OF AMERICA, the
17 PEOPLE OF THE STATE OF
CALIFORNIA, *ex rel.* CALIFORNIA
18 AIR RESOURCES BOARD, and NORTH
COAST UNIFIED AIR QUALITY
19 MANAGEMENT DISTRICT,

20 Plaintiffs,

21 v.

22 EVERGREEN PULP, INC.,

23 Defendant
24

CIV. NO.

CONSENT DECREE

Consent Decree

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1 Concurrently with the lodging of this Consent Decree, the United States of America, on
 2 behalf of the United States Environmental Protection Agency ("EPA"), the California Air
 3 Resources Board ("ARB") and the North Coast Unified Air Quality Management District
 4 ("North Coast" or "District") (collectively, the "Plaintiffs") have filed a Complaint in this action
 5 pursuant to Section 113 of the Clean Air Act (the "CAA"), 42 U.S.C. § 7413, California Health
 6 and Safety Code § 42403, and North Coast Unified Air Quality Management District Rule 105
 7 alleging that Defendant Evergreen Pulp, Inc. ("Defendant" or "Evergreen") violated the CAA,
 8 California state law and District regulations at its kraft pulp mill in Samoa, Humboldt County,
 9 California (the "Facility").

10 The Complaint alleges that Defendant has failed to comply with applicable CAA
 11 requirements, including, but not limited to, its operating permit issued by North Coast pursuant
 12 to Title V of the CAA, 42 U.S.C. § 7661a-7661f; the New Source Performance Standards
 13 applicable to Pulp and Paper Mills, 40 C.F.R. Part 60, Subpart BB; and the National Emissions
 14 Standards for Hazardous Air Pollutants ("NESHAPs"), General Provisions, and as applicable to
 15 Chemical Recovery Combustion Sources at Kraft Pulp Mills, 40 C.F.R. Part 63, Subparts A and
 16 MM, Part 4 of Division 26 of the California Health and Safety Code and the Rules and
 17 Regulations of the North Coast Unified Air Quality Management District.

18 Defendant denies any liability to the Plaintiffs arising out of the transactions or
 19 occurrences alleged in the Complaint.

20 The Parties recognize, and the Court by entering this Consent Decree finds, that this
 21 Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between
 22 the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

23 NOW, THEREFORE, before the taking of any testimony, without the adjudication or
 24 admission of any issue of fact or law except as provided in Section I (JURISDICTION AND
 25 VENUE) below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED,
 26 AND DECREED as follows:

27 I. JURISDICTION AND VENUE

28 1. This Court has jurisdiction over the subject matter of this action, pursuant to 28

1 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and
2 over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), and 28 U.S.C. §§
3 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint occurred in, and
4 Defendant conducts business in, this judicial District. For purposes of this Decree, or any action
5 to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such
6 action and over Defendant, and consents to venue in this judicial District.

7 2. Notice of the commencement of this action has been given to the State of
8 California, as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

9 II. APPLICABILITY

10 3. The obligations of this Consent Decree apply to and are binding upon the United
11 States, ARB and North Coast, and upon Defendant and any successors, assigns, or other entities
12 or persons otherwise bound by law.

13 4. No transfer of ownership or operation of the Facility, in whole or in part, whether
14 in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to
15 ensure that the terms of the Decree are implemented. Notwithstanding the foregoing, EPA,
16 North Coast and ARB may agree to relieve Defendant of all or a portion of its obligation to
17 comply with the terms of this Decree if: (1) the transferee agrees to undertake the obligations
18 required by the Consent Decree and to be substituted for Defendant as a party under the Decree
19 and be thus bound by the terms thereof, and (2) EPA, North Coast and ARB approve such
20 transferee. EPA, North Coast and ARB may request information regarding the transferee's
21 financial ability to assume such obligations and compliance history prior to granting such
22 approval. EPA, North Coast and ARB may condition such approval upon terms they deem
23 appropriate. At least thirty (30) days prior to such transfer, Defendant shall provide a copy of
24 this Consent Decree to the proposed transferee and shall simultaneously provide written notice of
25 the prospective transfer to EPA, the United States Department of Justice ("DOJ"), ARB and
26 North Coast in accordance with Section XII (NOTICES) of this Decree. Any attempt to transfer
27 ownership or operation of the Facility without complying with this Paragraph constitutes a
28 violation of this Decree.

1 5. Defendant shall provide a copy of this Consent Decree to all officers, employees,
2 and agents whose duties might reasonably include compliance with any provision of this Decree,
3 as well as to any contractor retained to perform work required under this Consent Decree.
4 Defendant shall condition any such contract upon performance of the work in conformity with
5 the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. CIVIL PENALTY

7. Within thirty (30) days after this Consent Decree is entered by this Court, Defendant shall pay the sum of three hundred thousand dollars (\$300,000) as a civil penalty to the United States. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of California. At the time of payment, Defendant shall simultaneously send written notice of payment (referencing DOJ case number 90-5-2-1-08786 and the case name and civil action number of this case), and a copy of any transmittal documentation to EPA and DOJ in accordance with Section XII (NOTICES) of this Decree.

19 8. Within thirty (30) days after this Consent Decree is entered by this Court,
20 Defendant shall pay the sum of three hundred thousand dollars (\$300,000) as a civil penalty to
21 ARB. Such payment shall be made to the Air Resources Board Air Pollution Control Fund and
22 sent to the party designated to receive notice under Paragraph 63 below with a copy of the
23 transmittal of such payment to ARB counsel also designated in Paragraph 63.

24 9. Within thirty (30) days after this Consent Decree is entered by this Court,
25 Defendant shall pay the sum of three hundred thousand dollars (\$300,000) as a civil penalty to
26 North Coast. Payment shall be made by EFT to the North Coast Unified Air Quality
27 Management District in accordance with account and routing instructions that shall be provided
28 by North Coast to Defendant following lodging of the Consent Decree. At the time of payment,

1 Defendant shall simultaneously send written notice of payment and a copy of any transmittal
2 documentation to North Coast in accordance with Section XII (NOTICES) of this Decree.

3 IV. COMPLIANCE REQUIREMENTS

4 10. Upon the date this Consent Decree is entered by this Court (the "Effective Date"),
5 Evergreen shall be in compliance with 40 C.F.R. Part 63, Subparts A and MM for the recovery
6 boiler and smelt dissolving tank ("SDT").

7 11. By April 26, 2007, Evergreen shall be in compliance with 40 C.F.R. Part 63,
8 Subparts A and MM for the lime kiln.

9 12. Emission Limits for Smelt Dissolving Tank Exhaust Stack: Evergreen shall not
10 exceed the following emission limits:

11 Particulate Matter: 0.20 pounds per ton of black liquor solids ("BLS") pursuant to
12 North Coast State Implementation ("SIP") Regulation 1-4, Rule 420(d) and 40 C.F.R. §§
13 60.282(a)(2) and 63.862(a)(i)(B).

14 13. Operational Requirements for Smelt Dissolving Tank Wet Scrubber and Spray
15 Curtain: Evergreen shall maintain and operate the wet scrubber and spray curtain to control
16 particulate emissions from the smelt dissolving tank in accordance with the requirements set
17 forth in Paragraphs 28 through 34 of the revised Authority to Construct Permit No. 000-233-1
18 issued by North Coast on January 20, 2006 (attached hereto as Appendix A). The obligation in
19 this paragraph to maintain and operate the wet scrubber and spray curtain shall cease, however, if
20 and when Evergreen commences to control particulate matter emissions from the smelt
21 dissolving tank with new or different emissions control equipment, provided that Evergreen
22 meets all local, state and federal requirements applicable to the modification.

23 14. Monitoring, Reporting and Recordkeeping for Smelt Dissolving Tank Emissions:
24 Unless or until such Authority to Construct Permit is modified, terminated or revoked by North
25 Coast, Evergreen shall comply with the monitoring, reporting and recordkeeping requirements of
26 Paragraph 43 through 57 of the revised Authority to Construct Permit issued by North Coast on
27 January 20, 2006 (Appendix A).

28 15. Alternative Monitoring Plan for Smelt Dissolving Tank: Upon the Effective Date

1 of this Consent Decree, Evergreen shall have submitted to EPA, North Coast and ARB an
2 alternative monitoring plan for the smelt dissolving tank spray curtain, pursuant to 40 C.F.R. §
3 63.864(e)(14).

4 16. ESP for Lime Kiln: As part of the consideration for this settlement, Evergreen
5 installed an electrostatic precipitator ("ESP") to control particulate matter emissions from the
6 lime kiln. Evergreen commenced operation of the ESP on April 26, 2007, and conducted an
7 initial performance test of the ESP between May 22-28, 2007.

8 a. Evergreen shall demonstrate compliance with the particulate emission standard
9 using EPA Method 5 and CARB Method 5 pursuant to Paragraph 66(a)(i)-(iv) and (b)(i)-(iv) of
10 the Authority to Construct Permit # 000348-1 dated November 8, 2006 ("2006 ATC") (Appendix
11 B hereto). Evergreen submitted a copy of the performance test results to EPA, North Coast, and
12 ARB within sixty (60) days following completion of the performance test.

13 b. Evergreen shall complete optimization testing by June 20, 2007, as set forth in
14 Paragraphs 59-62 of the 2006 ATC (Appendix B hereto). A copy of the report that describes the
15 results of the optimization testing was submitted to EPA, North Coast, and ARB within sixty
16 (60) days following completion of the testing.

17 17. Emission Limits for Lime Kiln Exhaust Stack: Beginning on April 26, 2007,
18 Evergreen shall not exceed any of the following emission limits:

19 a. Particulate Matter: 0.064 grains ("gr") per dry standard cubic foot ("dscf")
20 (corrected to 10% oxygen) pursuant to 40 C.F.R. § 63.862(a)(i)(c)).

21 b. Opacity:

22 i. 20 percent for 6 percent or more of the operating time within any
23 quarterly period pursuant to 40 C.F.R. § 63.864(k)(2);

24 ii. 40 percent for 3 minutes in any one hour pursuant to North Coast SIP
25 Regulation 1-4, Rule 410(a).

26 18. Continuous Opacity Monitoring System ("COMS") for Lime Kiln Exhaust Stack:
27 Evergreen shall install, maintain and operate a COMS for the Lime Kiln Exhaust Stack according
28 to the following schedule:

1 a. Evergreen shall have completed installation and commence operation of the
2 COMS according to the requirements set forth in 40 C.F.R. §§ 63.6(h), 63.8 and 63.864(d)(3)
3 and (4) by May 16, 2007.

4 b. Evergreen shall certify that the COMS meets the requirements set forth in 40
5 C.F.R. §§ 63.6(h), 63.8 and 63.864(d)(3) and (4) by September 5, 2007.

6 c. Evergreen shall implement corrective action, as specified by the startup, shutdown
7 and malfunction plan required by Paragraph 21 below and 40 C.F.R. § 63.866(a) if the average of
8 ten consecutive 6-minute averages result in a measurement greater than 20 percent opacity.

9 19. Interim Requirements for the Lime Kiln:

10 a. Unless Evergreen has been authorized by North Coast before the Effective Date
11 to terminate such operations and maintenance, Evergreen shall, upon the Effective Date of this
12 Consent Decree, operate and maintain a HydroMist quench lance system to mitigate excess
13 particulate matter emissions from the lime kiln, as follows:

14 i. The total liquid flow rate through the lance header on the quench system
15 shall be operated at a minimum of 100 gallons per minute based on a
16 3-hour rolling average.

17 ii. Evergreen shall monitor the flow rate on the lance header at least once
18 every successive 15-second period. Evergreen shall record the averaged
19 flow rate through the lance header at least once every successive 15-
20 minute period.

21 iii. Upon the Effective Date of this Consent Decree, Evergreen shall have
22 submitted to EPA, North Coast and ARB an alternative monitoring plan
23 for the lime kiln HydroMist quench lance system, pursuant to 40 C.F.R.
24 § 63.864(e)(14).

25 iv. Upon the Effective Date of this Consent Decree, Evergreen will have
26 prepared and submitted to EPA, North Coast and ARB a proposed
27 inspection and maintenance plan for the quench lance system.

28 b. If not necessary to maintain compliance with applicable emission limits,

1 Evergreen shall request authorization from North Coast to terminate operation of the HydroMist
2 quench lance system. A copy of the request shall be sent to ARB and EPA. Such request shall
3 include a description of why the quench lance system is not needed to comply with the applicable
4 emission limits for the lime kiln. Use of the quench lance system shall not be terminated without
5 the affirmative approval of North Coast.

6 20. Record Retention: No later than the Effective Date of this Consent Decree,
7 Evergreen shall be in compliance with the record retention requirements of 40 C.F.R. §§
8 63.10(b)(1) and 63.866(c)(3) for records of pressure drop and scrubbing liquid flow rate at the
9 scrubber for the smelt dissolving tank, provided, however, that Evergreen shall not be required to
10 be in possession, on or after the Effective Date, of such records that were not retained before
11 August 31, 2006.

12 21. Startup, Shutdown and Malfunction Plan:

13 a. Upon the Effective Date of this Consent Decree, Evergreen shall have submitted
14 to EPA, North Coast, and ARB a startup, shutdown and malfunction plan ("SSM Plan"), as
15 required by 40 C.F.R. § 63.866(a), for the recovery boiler, the smelt dissolving tank and the lime
16 kiln. The submitted SSM Plan shall include an update to address the SDT spray curtain and the
17 Lime Kiln ESP and, as applicable, the HydroMist quench lance system.

18 b. Upon the Effective Date of this Consent Decree, Evergreen will have prepared
19 and submitted to EPA, North Coast and ARB an updated SSM Plan for the Lime Kiln ESP.

20 22. Recordkeeping and Reporting: Upon the Effective Date of this Consent Decree,
21 Evergreen shall comply with applicable recordkeeping and reporting requirements of 40 C.F.R.
22 Part 63, Subparts A and MM.

23 23. Continuous Emission Monitoring System (CEMS) and COMS Requirements:

24 a. No later than the Effective Date of this Consent Decree, Evergreen shall send a
25 notice to EPA, ARB and North Coast certifying that the operation of the recovery boiler and lime
26 kiln CEMS meets the requirements of 40 C.F.R. Part 60, Appendices B and F, including current
27 Quality Assurance ("QA")/Quality Control ("QC") plans, performance of quarterly gas audits,
28 COMS quarterly audits, calibration drift tests, and annual relative accuracy test audit. This

1 notification shall contain the certification statement required by Paragraph 27 of this Decree.

2 b. No later than the Effective Date of this Consent Decree, Evergreen shall send a
3 notice to EPA, ARB and North Coast certifying that a quality control program and plan has been
4 developed and implemented for the recovery boiler COMS that meets the requirements set forth
5 in 40 C.F.R. § 63.8(d). This notification shall contain the certification statement required by
6 Paragraph 27 of this Decree.

7 c. Evergreen shall certify that a quality control program and plan has been developed
8 and implemented for the lime kiln COMS that meets the requirements set forth in 40 C.F.R. §
9 63.8(d) by September 5, 2007.

10 24. Permits. When any compliance obligation under this Section requires Defendant
11 to obtain a federal, state, or local permit or approval, Defendant shall submit timely applications
12 and timely provide additional information as requested by the permitting authority to make its
13 applications complete, and take all other actions reasonably necessary to obtain all such permits
14 or approvals. Defendant may seek relief under the provisions of Section VII (FORCE
15 MAJEURE) of this Consent Decree for any delay in the performance of any such obligation
16 resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to
17 fulfill such obligation, if Defendant has submitted timely and complete applications and, in
18 accordance with the foregoing, has taken all other actions reasonably necessary to obtain all such
19 permits or approvals. This Paragraph shall not relieve Defendant of any obligation arising under
20 federal, state or local rule or regulation pertaining to permit approval. Nothing in this Decree
21 shall impair Evergreen's right to appeal a permit or approval, or permit or approval condition,
22 pursuant to applicable appeal procedures, except that Evergreen shall not challenge any condition
23 of a permit or approval that is also a provision of this Consent Decree. Subject to this limitation
24 the time for performance of provisions of this Consent Decree that require Evergreen to obtain a
25 federal, state, or local permit or approval shall be tolled during the pendency of an appeal.

26 V. REPORTING REQUIREMENTS

27 25. Defendant shall submit the following reports, commencing on the Effective Date
28 of this Consent Decree:

1 a. Within thirty (30) days after the end of each calendar-year quarter (*i.e.*,
2 by April 30, July 30, October 30, and January 30) after the Effective Date of this Consent Decree,
3 until termination of this Decree pursuant to Section XVI (TERMINATION), Defendant shall
4 submit to EPA, North Coast and ARB a quarterly report for the preceding quarter that shall
5 summarize: the status of any construction or compliance measures (e.g., permitting process,
6 anticipated start-up of operation, testing, etc.); completion of milestones; problems encountered
7 or anticipated, together with implemented or proposed solutions; and status of permit
8 applications. At the time a quarterly report is submitted to EPA and ARB, Defendant shall
9 submit to EPA and ARB a copy of all reports submitted to North Coast during the quarterly
10 period if these reports have not been previously provided to EPA and ARB.

11 b. Defendant shall notify EPA, North Coast and ARB in a written
12 report, within five (5) business days of the day Defendant first becomes aware of a violation of
13 any requirement of this Consent Decree, and shall identify its duration or, as applicable, likely
14 future duration, with an explanation of the violation's likely cause and of the remedial steps
15 taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be
16 fully explained at the time this report is due, Defendant shall so state in the report. Defendant
17 shall investigate the cause of the violation and shall then submit an amendment to the report,
18 including a full explanation of the cause of the violation, within thirty (30) days of the day
19 Defendant becomes aware of the cause of its violation. Nothing in this Paragraph relieves
20 Defendant of its obligation to provide the notice required by Section VII (FORCE MAJEURE) of
21 this Consent Decree.

22 26. All reports shall be submitted to the persons designated in
23 Section XII (NOTICES) of this Consent Decree.

24 27. Each report submitted by Defendant under this Section shall be signed by an
25 official of the submitting party and include the following certification:

26 I certify under penalty of law that I have examined and am familiar with the information
27 submitted in this document and all attachments and that this document and its attachments were
28 prepared either by me personally or under my direction or supervision in a manner designed to
ensure that qualified and knowledgeable personnel properly gather and present the information
contained therein. I further certify, based on my personal knowledge or on my inquiry of those

1 individuals immediately responsible for obtaining the information, that the information is true,
2 accurate and complete. I am aware that there are significant penalties for submitting false
3 information, including the possibility of fines and imprisonment for knowingly and willfully
4 submitting a materially false statement.

5 This certification requirement does not apply to emergency or similar notifications where
6 compliance would be impractical.

7 28. The reporting requirements of this Consent Decree do not relieve Defendant of
8 any reporting obligations required by the CAA or implementing regulations, or by any other
9 federal, state, or local law, regulation, permit, or other requirement.

10 VI. STIPULATED PENALTIES

11 29. If Defendant fails to pay the civil penalty required to be paid under Paragraph 7 of
12 this Decree when due, Defendant shall pay a stipulated penalty of five thousand dollars (\$5000)
13 per day for each day that the payment is late. All transmittal correspondence shall state that any
14 such payment is for stipulated penalties for late payment, and shall include the identifying
15 information set forth in Paragraph 7.

16 30. If Defendant fails to pay the civil penalty required to be paid under Paragraph 8 of
17 this Decree when due, Defendant shall pay a stipulated penalty of five thousand dollars (\$5000)
18 per day for each day that the payment is late. All transmittal correspondence shall state that any
19 such payment is for stipulated penalties for late payment, and shall include the identifying
20 information set forth in Paragraph 8.

21 31. If Defendant fails to pay the civil penalty required to be paid under Paragraph 9 of
22 this Decree when due, Defendant shall pay a stipulated penalty of five thousand dollars (\$5000)
23 per day for each day that the payment is late. All transmittal correspondence shall state that any
24 such payment is for stipulated penalties for late payment, and shall include the identifying
25 information set forth in Paragraph 9.

26 32. Defendant shall be liable for stipulated penalties to the United States, ARB
27 and North Coast to the extent that any or all of these Agencies joins in a written demand for and
28 is entitled to payment of stipulated penalties for violations of this Consent Decree as specified
below, unless excused under Section VII (FORCE MAJEURE). A violation includes failing to

1 perform any obligation required by the terms of this Decree, including any work plan or schedule
 2 approved under this Decree, according to all applicable requirements of this Decree and within
 3 the specified time schedules established by or approved under this Decree.

4
 5 **Consent Decree Violation**

**Stipulated Penalty (Per day per violation
 unless otherwise specified)**

6 Failure to comply with particulate matter
 7 emission limits in Paragraph 17 after
 8 April 25, 2007

\$1,000 for the 1st through 45th day
 \$2,500 for the 45th through 60th day
 \$10,000 for the 61st day and each day
 beyond

9
 10 Except as provided above, failure to comply
 11 with particulate matter emission limits in
 Paragraphs 12 and 17

\$2,500 for the 1st through 14th day
 \$5,000 for the 15th through 30th day
 \$10,000 for the 31st day and each day
 beyond

12 Failure to comply with 20% opacity limit in
 13 Paragraph 17(b)(i)

\$50,000 per quarter

14 Failure to comply with 40% opacity limit in
 15 Paragraph 17(b)(ii)

\$5,000 for each hour

16 Failure to comply with any compliance
 17 milestone in Paragraph 16 with regard to
 installation, testing, maintenance, and operation
 of an ESP

\$2,500 for the 1st through 14th day
 \$5,000 for the 15th through 30th day
 \$10,000 for the 31st day and each day
 beyond

18 Failure to comply with any compliance
 19 milestone in Paragraph 18 (a) or (b) with regard
 20 to installation, operation and certification of
 COMS

\$2,500 for the 1st through 14th day
 \$5,000 for the 15th through 30th day
 \$10,000 for the 31st day and each day
 beyond

21 Failure to comply with any requirement in
 22 Paragraphs 13 or 14

\$5,000

23 Failure to timely submit Alternative
 24 Monitoring Plan for the SDT spray lance
 system as required by Paragraph 15

\$1,000

25 Failure to comply with any requirement in
 26 Paragraph 19 regarding the Lime Kiln
 quench system

\$1,000

27 Failure to comply with record retention
 28 requirements in Paragraph 20

\$1,000

1	Failure to timely submit SSM plan as required by Paragraph 21	\$1,000
2		
3	Failure to comply with recordkeeping and reporting requirements in Paragraph 22	\$1,000
4	Failure to timely certify to CEMS and COMS requirements as required by Paragraph 23	\$1,000
5		
6	Failure to comply with any reporting requirement in Section V (REPORTING REQUIREMENTS) of this Consent Decree	\$1,000 for the 1 st through 14 th day \$2,500 for the 15 th through 30 th day \$5,000 for the 31 st day and each day beyond
7		
8	Any other violation of this Consent Decree	\$1,000

9 33. Stipulated penalties assessed pursuant to this Section VI (STIPULATED
10 PENALTIES) shall begin to accrue on the day after performance is due or on the day a violation
11 occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily
12 completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for
13 separate violations of this Consent Decree. Except as otherwise provided in this Decree,
14 Defendant shall pay any stipulated penalties within thirty (30) days of receiving the Plaintiffs'
15 written demand.

16 34. Either the United States, ARB or North Coast may seek stipulated penalties under
17 Paragraph 32. Plaintiffs who seek stipulated penalties under Paragraph 32 shall make their
18 written demand therefor jointly. Where more than one of the Plaintiffs seek stipulated penalties
19 for the same violation of this Consent Decree, Defendant shall divide the payment of stipulated
20 penalties equally among the Plaintiffs seeking stipulated penalties, and shall make payment in
21 accordance with the instructions in Paragraphs, 7, 8, and 9 of this Consent Decree.

22 35. The United States, ARB or North Coast may, in the unreviewable exercise of its
23 discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

24 36. Stipulated penalties shall continue to accrue during any dispute resolution
25 conducted pursuant to Section VIII (DISPUTE RESOLUTION), but need not be paid until the
26 following:

27 a. If the dispute is resolved by agreement or by a decision of EPA, ARB and North
28 Coast that is not appealed to the Court, Defendant shall pay accrued penalties determined or

1 agreed to be owing, together with interest, to the Plaintiffs that have demanded stipulated
2 penalties within thirty (30) days of the date of the agreement or decision.

3 b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part,
4 Defendant shall pay all accrued penalties determined by the Court to be owing, together with
5 interest, within sixty (60) days of receiving the Court's decision or order, except as provided in
6 Subparagraph c, below.

7 c. If any party appeals the District Court's decision, Defendant shall pay all accrued
8 penalties determined to be owing, together with interest, within fifteen (15) days of receiving the
9 final appellate court decision.

10 37. Defendant shall pay stipulated penalties in accordance with instructions in
11 Paragraphs 7, 8 and 9 of this Consent Decree as applicable. If Defendant fails to pay stipulated
12 penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on
13 such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

14 38. The stipulated penalties provided for in this Consent Decree shall be in addition to
15 any other rights, remedies, or sanctions available to the Plaintiffs for Defendant's violation of
16 this Consent Decree or applicable law. Where a violation of this Decree is also a violation of the
17 Clean Air Act, the Health & Safety Code, or North Coast Rules and Regulations, Defendant shall
18 be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for
19 such violation.

20 VII. FORCE MAJEURE

21 39. A "force majeure event" is any event beyond the control of Defendant, its
22 contractors, or any entity controlled by Defendant that delays or prevents the performance of any
23 obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation.
24 "Best efforts" includes anticipating any potential force majeure event and addressing the effects
25 of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any
26 resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's
27 financial inability to perform any obligation under this Consent Decree. The determination that
28 an event is a force majeure event under this Consent Decree shall not alter or amend any other

1 applicable term, requirement or condition in any permit or federal, state, or local law, rule or
2 regulation ("Applicable Requirements").

3 40. Defendant shall provide notice to EPA, ARB and North Coast orally or by
4 electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time
5 Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed
6 force majeure event. Defendant shall also provide written notice to EPA, ARB and North Coast
7 within seven (7) days of the time Defendant first knew of, or by the exercise of due diligence,
8 should have know of, the event. The notice shall state the anticipated duration of any delay; its
9 cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for
10 carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure
11 event. Failure to provide oral and written notice as required by this Paragraph shall preclude
12 Defendant from asserting any claim of force majeure.

13 41. If the EPA, ARB and North Coast (the "Agencies") collectively agree that a force
14 majeure event has occurred, the Agencies may agree to extend the time for Defendant to perform
15 the affected requirements for the time necessary to complete those obligations. An extension of
16 time to perform the obligations affected by a force majeure event shall not, by itself, extend the
17 time to perform any other obligation. Where the Agencies agree to an extension of time, the
18 appropriate modification shall be made pursuant to Section XV (MODIFICATION) of this
19 Consent Decree.

20 42. If the Agencies do not all agree that a force majeure event has occurred, or do not
21 all agree to the extension of time sought by Defendant, it shall be deemed that a force majeure
22 event has not occurred and/or that the extension of time sought by Defendant will not be granted,
23 unless Defendant invokes Dispute Resolution under Section VIII (DISPUTE RESOLUTION) of
24 this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a
25 preponderance of the evidence, that each claimed force majeure event is a force majeure event,
26 that Defendant gave the notice required by Paragraph 40, that the force majeure event caused any
27 delay Defendant claims was attributable to that event, and that Defendant exercised best efforts
28 to prevent or minimize any delay caused by the event.

VIII. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the Plaintiffs to enforce any obligation of Defendant arising under this Decree.

44. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the Agencies a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed fifteen (15) days from the date the dispute arises, unless that period is modified by written agreement of the Agencies and the Defendant. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Agencies shall be considered binding unless, within twenty (20) days after receiving written notice from any Agency terminating informal negotiations, Defendant invokes formal dispute resolution procedures as set forth below.

45. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Agencies a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or expert opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

46. The Agencies shall serve their Statement of Position within twenty (20) days of receipt of Defendant's Statement of Position. The Agencies' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Agencies. The Agencies' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

1 47. Defendant may seek judicial review of the dispute by filing with the Court and
 2 serving on the Plaintiffs, in accordance with Section XII (NOTICES) of this Consent Decree, a
 3 motion requesting judicial resolution of the dispute. The motion must be filed within ten (10)
 4 days of receipt of the Agencies' Statement of Position pursuant to the preceding Paragraph. The
 5 motion shall contain a written statement of Defendant's position on the matter in dispute,
 6 including any supporting factual data, analysis, opinion, or documentation, and shall set forth the
 7 relief requested and any schedule within which the dispute must be resolved for orderly
 8 implementation of the Consent Decree.

9 48. The Plaintiffs shall respond to Defendant's motion within the time period allowed
 10 by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent
 11 permitted by the Local Rules.

12 49. In any dispute brought under Paragraph 47, Defendant shall bear the burden of
 13 demonstrating that its position clearly complies with this Consent Decree and that Defendant is
 14 entitled to relief under applicable law. The Plaintiffs reserve the right to argue that their position
 15 is reviewable only on the administrative record and must be upheld unless arbitrary and
 16 capricious or otherwise not in accordance with law.

17 50. The invocation of dispute resolution procedures under this Section shall not, by
 18 itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent
 19 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with
 20 respect to the disputed matter shall continue to accrue from the first day of noncompliance, but
 21 payment shall be stayed pending resolution of the dispute as provided in Paragraph 36, above. If
 22 Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid
 23 as provided in Section VI (STIPULATED PENALTIES).

24 IX. INFORMATION COLLECTION AND RETENTION

25 51. The Plaintiffs and their representatives, including attorneys, contractors, and
 26 consultants, shall have the right of entry into the Facility at all reasonable times, upon
 27 presentation of credentials, to:

- 28 a. monitor the progress of activities required under this Consent Decree;

1 b. verify any data or information submitted to the Plaintiffs in accordance with the
2 terms of this Consent Decree;

3 c. obtain samples and, upon request, splits of any samples taken by Defendant or its
4 representatives, contractors, or consultants;

5 d. obtain documentary evidence, including photographs and similar data; and

6 e. assess Defendant's compliance with this Consent Decree.

7 52. Upon request, Defendant shall provide the Agencies or their authorized
8 representatives splits of any samples taken by Defendant. Upon request, the Agencies shall
9 provide Defendant splits of any samples taken by the Agencies.

10 53. Until five (5) years after the termination of the Consent Decree, Defendant shall
11 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all
12 documents, records, or other information (including documents, records, or other information in
13 electronic form) in its or its contractors' or agents' possession or control, or that come into its or
14 its contractors' or agents' possession or control, and that relates in any manner to Defendant's
15 performance of its obligations under this Consent Decree. This information-retention
16 requirement shall apply regardless of any contrary corporate or institutional policies or
17 procedures. At any time during this information-retention period, the Plaintiffs may request
18 copies of any documents, records, or other information required to be maintained under this
19 Paragraph.

20 54. At the conclusion of the information-retention period provided in the preceding
21 Paragraph, Defendant shall notify Plaintiffs at least ninety (90) days prior to the destruction of
22 any documents, records, or other information subject to the requirements of the preceding
23 Paragraph and, upon request by Plaintiffs, Defendant shall deliver any such documents, records,
24 or other information to Plaintiffs. Defendant may assert that certain documents, records, or other
25 information is privileged under the attorney-client privilege or any other privilege recognized by
26 federal law. If Defendant asserts such a privilege, it shall provide the following for each
27 document, record or information: (1) the title; (2) the date; (3) the name and title of each author;
28 (4) the name and title of each addressee and recipient; (5) a description of the subject; and (6) the

1 privilege asserted by Defendant. However, no documents, records, or other information created
 2 or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
 3 privilege.

4 55. Defendant may also assert that information required to be provided under this
 5 Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to
 6 any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures
 7 set forth in 40 C.F.R. Part 2.

8 56. This Consent Decree in no way limits or affects any right of entry and inspection,
 9 or any right to obtain information, held by the Plaintiffs pursuant to applicable federal, state or
 10 local laws, regulations, or permits, nor, except as provided in Paragraph 20, does it limit or
 11 affect any duty or obligation of Defendant to maintain documents, records, or other information
 12 imposed by applicable federal, state or local laws, regulations, or permits.

13 X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

14 57. This Consent Decree resolves (a) the civil claims of the Plaintiffs for the
 15 violations alleged in the Complaint filed in this action through the date of lodging of this
 16 Consent Decree; (b) the civil claims alleged in EPA Finding of Violation (Docket No. R9-05-20),
 17 EPA Finding and Notice of Violation (Docket No. R9-06-05) and EPA Finding of Violation
 18 (Docket No. R9-06-01); (c) the civil claims alleged in North Coast Notices of Noncompliance
 19 NON Nos. 10068, 10209, 10214, 10156, 10462, 10467, 10470, 10471, 10472, 10474, and 11302,
 20 and (d) the civil claims alleged in North Coast's Stipulated Order of Abatement (No. 01-05-06).

21 58. The Plaintiffs reserve all legal and equitable remedies available to enforce the
 22 provisions of this Consent Decree. This Consent Decree shall not be construed to limit the
 23 rights of the Plaintiffs to obtain penalties or injunctive relief under the CAA or implementing
 24 regulations, or under other federal, state or local laws, regulations, or permit conditions, except as
 25 expressly specified in Paragraph 57.

26 59. The terms, requirements and conditions of this Consent Decree are in addition to,
 27 and not in lieu of, any other applicable term, requirement or condition in any permit or federal,
 28 state or local law, rule or regulation ("Applicable Requirement(s)"). Compliance with this

1 Consent Decree does not constitute or excuse compliance with any other Applicable
 2 Requirement. Evergreen is responsible apart from this Consent Decree for achieving and
 3 maintaining complete compliance with all Applicable Requirements, and Evergreen's
 4 compliance with this Consent Decree shall not constitute a defense to any action to enforce any
 5 Applicable Requirement. This Consent Decree is not a permit or a modification of any permit.
 6 Plaintiffs do not by their consent to entry of this Consent Decree warrant or aver in any manner
 7 that compliance with any aspect of this Consent Decree will result in compliance with the CAA
 8 or state law. This Consent Decree shall not be construed to prevent or limit the rights of the
 9 United States, the State of California or North Coast to obtain penalties or injunctive relief under
 10 the CAA or state law except as specified in Paragraph 57.

11 60. Except as otherwise provided by law or determined by a Court of competent
 12 jurisdiction, this Consent Decree does not limit or affect the rights of Defendant or of the
 13 Plaintiffs against any third parties not party to this Consent Decree, nor does it limit the rights of
 14 third parties not party to this Consent Decree against Defendant, except as otherwise provided by
 15 law.

16 61. This Consent Decree shall not be construed to create rights in, or grant any cause
 17 of action to, any third party not party to this Consent Decree.

18 XI. COSTS

19 62. The Parties shall bear their own costs of this action, including attorneys' fees,
 20 except that the Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred
 21 in any action necessary to enforce this Consent Decree.

22 XII. NOTICES

23 63. Unless otherwise specified herein, whenever notifications, submissions, or
 24 communications are required by this Consent Decree after the Effective Date, they shall be made
 25 in writing and addressed as follows:

26 To the United States or DOJ:

27 Chief, Environmental Enforcement Section
 28 Environment and Natural Resources Division
 U.S. Department of Justice

1 Box 7611, Ben Franklin Station
2 Washington, DC 20044-7611
3 Re: DOJ No. 90-5-2-1-08786

4 To EPA:

5 Kara Christenson, ORC-2
6 U.S. Environmental Protection Agency, Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105
9 e-mail: Christenson.Kara@epa.gov
10 (will accept notification by email)

11 Director, Air Division (AIR-1)
12 U.S. Environmental Protection Agency, Region IX
13 75 Hawthorne Street
14 San Francisco, CA 94105
15 Attn: Cyntia Steiner (AIR-5)
16 e-mail: Steiner.Cyntia@epa.gov
17 (will accept notification by email)

18 To ARB:

19 James Ryden
20 Chief Compliance Division
21 California Air Resources Board
22 1001 I Street, P.O. Box 2815
23 Sacramento, CA 95812
24 e-mail: jryden@arb.ca.gov

25 with a copy to:

26 George T. Poppic, Jr.
27 Senior Counsel
28 Air Resources Board
P.O. Box 2815
Sacramento, CA 95812
e-mail: gpoppic@arb.ca.gov

29 To North Coast

30 Richard Martin, Jr.
31 Air Pollution Control Officer
32 North Coast Unified Air Pollution Control District
33 2300 Myrtle Avenue
34 Eureka, CA 95501
35 e-mail: rmartin@ncuaqmd.org

36 Nancy Diamond
37 Attorney at Law
38 822 G Street, Suite 3
39 Arcata, CA 95521
40 e-mail: ndiamond@humboldt1.com

To Evergreen

David Tsang
Chief Executive Officer
Evergreen Pulp, Inc.
1 TCF Drive
Samoa, CA 95564
e-mail: DavidTsang@EvergreenPulp.com
(will accept notification by email)

Carol Romero
Manager, Environment and Safety
Evergreen Pulp, Inc.
1 TCF Drive
Samoa, CA 95564
e-mail: CarolRomero@EvergreenPulp.com
(will accept notification by email)

David Cooke
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111
e-mail: dcooke@allenmatkins.com
(will accept notification by email)

64. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

65. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties.

XIII. EFFECTIVE DATE

66. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XIV. RETENTION OF JURISDICTION

67. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section VIII (DISPUTE RESOLUTION) and Section XV (MODIFICATION), or effectuating or enforcing compliance with the terms of this Decree.

XV. MODIFICATION

68. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any

1 term of this Decree, it shall be effective only upon approval by the Court.

2 XVI. TERMINATION

3 69. After Defendant has maintained continuous satisfactory compliance with this
4 Consent Decree for a period of two (2) years after the Effective Date of this Consent Decree, and
5 has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree,
6 Defendants may serve upon Plaintiffs a Request for Termination, stating that Defendant has
7 satisfied those requirements, together with all necessary supporting documentation.

8 70. Following receipt by the Plaintiffs of Defendant's Request for Termination, the
9 Parties shall confer informally concerning the Request and any disagreement that the Parties may
10 have as to whether Defendant has satisfactorily complied with the requirements for termination
11 of this Consent Decree. If the Plaintiffs agree that the Decree may be terminated, the Parties
12 shall submit, for the Court's approval, a joint stipulation terminating the Decree.

13 71. If the Plaintiffs do not agree that the Decree may be terminated, Defendant may
14 invoke Dispute Resolution under Section VIII (DISPUTE RESOLUTION) of this Decree.
15 However, Defendant shall not seek Dispute Resolution of any dispute regarding termination,
16 under Paragraph 47 of Section VIII (DISPUTE RESOLUTION), until thirty (30) days after
17 service of its Request for Termination.

18 XVII. PUBLIC PARTICIPATION

19 72. This Consent Decree shall be lodged with the Court for a period of not less than
20 thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The
21 Plaintiffs reserve the right to withdraw or withhold their consent if the comments regarding the
22 Consent Decree disclose facts or considerations indicating that the Consent Decree is
23 inappropriate, improper or inadequate. Defendant consents to entry of this Consent Decree
24 without further notice.

25 XVIII. SIGNATORIES/SERVICE

26 73. Each undersigned representative of the Parties certifies that he or she is fully
27 authorized to enter into the terms and conditions of this Consent Decree and to execute and
28 legally bind the Party he or she represents to this document.


75. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the Plaintiffs have notified Defendant in writing that they no longer support entry of the Decree.

76. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

10 | XIX. FINAL JUDGMENT

11 77. Upon approval and entry of this Consent Decree by the Court, this Consent
12 Decree shall constitute a final judgment of the Court as to Plaintiffs and Defendant.

13 IT IS SO ORDERED:

14
15 Dated: 1/29/08
16 
United States District Judge